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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/177,837	10/23/1998	MICHAEL BURNETT	00167/318001	3644

7590 06/12/2003

JOEL R PETROW
SMITH & NEPHEW NORTH AMERICA
1450 BROOKS ROAD
MEMPHIS, TN 38116

EXAMINER

WHIPKEY, JASON T

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 06/12/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/177,837

Applicant(s)

BURNETT ET AL.

Examiner

Jason T. Whipkey

Art Unit

2612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached detailed advisory action.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-17.

Claim(s) withdrawn from consideration: _____.

8. ☒ The proposed drawing correction filed on 11 December 2002 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ADVISORY ACTION

1. The period for reply continues to run THREE MONTHS from the date of the final rejection. Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a) accompanied by the appropriate fee. The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. A reply within the meaning of 37 CFR 1.113 or a request for a continued examination (RCE) in compliance with 37 CFR 1.114 must be timely filed to avoid abandonment of this application.

2. The amendment filed May 13, 2003, under 37 CFR 1.116 in reply to the final rejection will be entered upon the filing of an appeal, but is not deemed to place the application in condition for allowance. Upon the filing of an appeal and entry of the amendment, the status of the claims would be as follows:

Allowed claims: None

Rejected claims: 1-17

Claims objected to: None

3. Upon appeal and entry of the amendment, claims 1-17 would be rejected for the reasons set forth in the final Office Action mailed February 12, 2003.

See 37 CFR 1.193(a)(2) which provides for the inclusion of these proposed rejections in the Examiner's Answer if Applicant elects to file an appeal to the Board of Patent Appeals and Interferences in this proceeding. To be complete, such rejections must be addressed in any brief on appeal.

Response to Arguments

4. Applicant's arguments filed May 13, 2003, have been fully considered but they are not persuasive.

The Applicant admits that the claims can be interpreted to read on the Tamura patent (page 1, lines 10-12) but still requests that the examiner use the "intended interpretation of the word 'determining'" (page 1, lines 12-15). However, the examiner notes that it has been held that even though reading the specification may shed light on the intended meaning of the term, "it is the applicants' burden to precisely define the invention, not the PTO's." *In re Morris*, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997). 35 U.S.C. 112, second paragraph, "puts the burden of precise claim drafting squarely on the applicant." *Id.*

5. The Applicant asks if the examiner has a suggestion for a word or phrase that could be used in lieu of "determining". The examiner would consider drafting the claim like:

1. An apparatus used with an electronic camera of the type associated with an electronic shutter which controls an image sensor, the apparatus comprising

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image size detection circuitry, which is responsive to ~~electrical~~ image signals received from the electronic camera, for ~~determining~~ measuring an actual active image area within a total image area of the image captured by the image sensor, and generating a control signal, based on the ~~actual~~ active image area, for controlling the electronic shutter.

Of course, the patentability of this claim would depend on a new search of the prior art.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason T. Whipkey, whose telephone number is (703) 305-1819. The examiner can normally be reached Monday through Friday from 9 A.M. to 6:30 P.M. eastern daylight time, alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wendy R. Garber, can be reached on (703) 305-4929. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communication and (703) 872-9315 for After Final communication.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office, whose telephone number is (703) 306-0377.

Response to this action should be mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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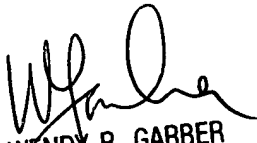
or faxed to the appropriate number above for communications intended for entry. (For informal or draft communications, please label "**PROPOSED**" or "**DRAFT**".)

Hand-delivered responses should be brought to the sixth floor receptionist of Crystal Park II, 2121 Crystal Drive in Arlington, Virginia.

JTW

JTW

June 4, 2003


WENDY R. GARBER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600